2: Bernardi E, M-4 (no date) 1955 FL12 Masai FL12



when the *aigwenani loongishu pokin* was recognised as a general leader. [119]

Judicial activity is not a real part of the *aigwenani's* office. It all depends on his personality and on how much he is favoured by his age-mates, who may ask him to arbitrate and settle their disputes. [120]

The election and the status of the *aunoni-otuno* as the ceremonial leader of the age-unit has already been described. A peculiar duty of the *aunoni's* office is the responsibility " for the smart turnout of the *moran* (initiates) ". [121] MERKER, [122] and HOLLIS, [123] state that the *aunoni* was responsible to the prophet (*laibon*) for the organisation of raids. The anonymous author of *MS.* 48, p. 4, describes him as the mascot of the unit when this was at war: " as long as he is alive they (the unit-members) cannot be beaten by the enemy... For this reason they take him on their raids ".

The relationship between the *aigwenani* and the *aunoni* is not clear. It seems certain that the latter has a more ceremonial and ritual character than the former.

The term of office for all these officers is limited to the existence of the age-unit as such; but they will always be distinguished and sought for their opinion.

The analysis of the unit's leaders does not offer a complete picture of the internal structure of the age-unit. This structure rests on two other institutions, namely the *manyatta*, which is the proper

[119] The *aigwenani* was not epected to take part in the actual fighting; he had to be in the rear to govern the action or, as FOSBROOKE, p. 38, puts it, " probably because the *laigwanan* wore the charm which had been obtained from the laibon, and its loss could not be risked ". At present, adds FOSBROOKE, p. 39, " the relations between senior *laigwanak* and their juniors are very lax. It is probable that this is due to the prohibition of raiding and consequent reduction of the occasions on which large-scale common efforts are required. In the old days when large groups of *moran* (initiates) came together for raids the senior *laigwanak* (sic.) must of necessity have asserted his position, and the others must have obeyed him, to ensure the success of the venture ".

[120] " It appears ", writes FOSBROOKE, p. 38, " to be the privilege of the aggrieved party to select his judges... If a local *laigwanan* han a reputation for fairness and justice, he will be called even from a distance, but proceedings are not invalidated if no *laigwanan* is present ".

[121] FOSBROOKE, p. 40. So, no initiate was supposed to cut off his pig-tail coiffure without the permission of the *aunoni*.

[122] MERKER, *l. c.*, p. 122.

[123] HOLLIS, *l. c.*, p. 299 n. 1.

5: Maguire G-5 (no date) 1928
FL12 Masai FL12
Kisongo



### *E-TAREMU EN-GIOO* : ABORTION

Abortion is rare.[1] Should a woman cause herself to abort, the matter is left to the women of the kraal, who generally beat the culprit. 682a

If a woman is made to abort by her husband or by another man, the matter is again left to the women. They may beat the culprit, but the more usual procedure is for them to take an ox of the abortionist's to some quiet place and beat it to death with sticks. The women then eat this ox, but no men or no pregnant women may be present while they are doing so.[2]

### *IL-DEKETA* : CURSES

If a warrior should curse an Elder, he must offer him a cow, a calf and a bottle of honey. If he does not do this, he will die.[3] 683

If one warrior is cursed by another, he may try to kill him. If he succeeds in doing so, he is liable to no penalty. On the other hand, he may bring the matter before the Council of Elders, who will fine the guilty party. [692]

### *IL-MOMA LOO-'L-MAASAE* : MASAI ORDEALS

#### *Eng-duo : The Bow* [4]

A strung bow is laid on the ground and the deponent swears in front of the Elders that his words are true. He then steps over the bow. Should his words be true, no harm will come to him, but should he be telling a lie, he will have bad luck and may shortly die. 695 [777]

[1] During three and a half years spent with the Masai of Tanganyika Territory, I came across only one case of abortion. In this, the husband had caused his wife to abort, as he was jealous of the father of the child. This man was a warrior of the same age as that to which the husband belonged.

[2] The converse of the custom whereby no women may see meat for the warriors' consumption before it has been cooked.

[3] For examples of Masai curses, see Hollis, *The Masai*, p. 344.

[4] *Eng-duo* is no longer regarded very seriously by the younger generation of Masai, and is falling into disuse in consequence. The other ordeals, particularly *Eng-itati*, are still regarded with awe, and I think it would be difficult to find a Masai living with the Tribe who would be prepared to testify falsely under ordeal.

7: Mailey G-4 (No date) 1950 FL12 Masai FL12



## THE ORGANIZATION OF THE NATIVE TRIBUNALS

As regards the administration of native justice, reference has been made above to the introduction of the system of Native Tribunals in 1918. It became obvious that these Tribunals were not generally recognized by the Masai, who preferred that such issues as arose between them should be settled in the customary manner by the Headmen or Elders. At present there are only two regularly constituted Tribunals in the Narok and two in the Kajiado District, with an Appeal Tribunal in each district.[1] Three of these Tribunals consist of a permanent salaried President and three salaried Tribunal Elders, taken from a panel of eight to twelve Elders ; in Ngong the Tribunal has five Elders. The Tribunal Elders represent different tribal Sections and are nominated by the District Commissioner after consultation with the Headmen and tribesmen. There are still a few Chiefs on the Tribunals, but in accordance with the policy followed elsewhere in Kenya, these are now being removed. There is in addition a loosely constituted Tribunal in the Loita with a President and an indefinite number of members, but they only hear a small number of cases a year.

Two of the Presidents receive salaries of 50s. and 25s. a month ; the others a sitting fee of 10s. a day. In two Tribunals the Elders receive 40s. a month and 18s. a month ; in the others they receive a sitting fee of 5s. a day. The Appeal Tribunals are composed of members of the Local Native Authority Councils detailed at each sitting of the Council to hear such Appeals as are pending, an unusual but apparently a satisfactory arrangement.

The preference for referring cases to the arbitration of local headmen or elders persists, and the civil issues which come before the regular Tribunals are few in number and refer mainly to matrimonial issues. In 1946, for example, the Native Tribunals dealt only with the following cases:—

| | Number of Original Cases | Appeals to Native Appeal Tribunals | Appeals to District Commissioners | Appeals to Provincial Commissioner |
|---|---|---|---|---|
| Civil .. .. | 163 | 20 | 6 | 3 |
| Criminal .. | 95 | Not Available | .. | .. |

These figures exclude, however, the large number of cases referring to breaches of the Poll Tax Ordinance, which in Narok alone were over 500 in 1946 and over 1,500 in 1945.

Judging only from such figures as are available for the appeals to Administrative Officers, the decisions of the Tribunals appear to have been generally accepted, but it is difficult to arrive at any judgment on the matter in view of the restricted field of civil issues or of true criminal issues which have come before the Tribunals. In paragraph 417 of his study of the Kenya Native Tribunals Mr. A. Phillips has called attention to the necessity for a close supervision over the exercise of criminal jurisdiction by Tribunals such as these, which are still at such a rudimentary stage of development, and he further points out that in civil issues this is in particular necessary in order to prevent

[1] These details differ from those given at page 141 of the Report on Kenya Native Tribunals, A. Phillips, 1945.

/74 cont./

561 634 578 The principal activity of the ol aunoni consists in keeping the people of his district together and protecting them from splitting up, which could be more or less disastrous for the Masai. Occasion for this is furnished by both the constant petty jealousies and friction between the warriors of the various areas, who, for example, not infrequently plan two war expeditions at the same time, instead of concentrating on one, and the short-sighted selfishness of many old men, who are inclined, in the selection of new pasturing places, to think only of the quality of the pasture, instead of also considering whether the warriors are in a position to protect the desired place from hostile attacks. An enemy's success affects not only the one who loses all his property in connection with it, but is a disgrace for the [681] whole people. In such cases the ol aunoni asserts his authority. To one who does not obey him, the authority of the ol aunoni is, as a 561 rule, made clear by the others by means of a beating. Besides this 634 activity, the ol aunoni, if necessary, acts as an intermediary between [791] the people of his district and the ol oiboni, and sometimes his de- [692] cision is requested in legal disputes, but since in this case he is guided very little by legal principles, but rather by political shrewdness, one cannot actually designate him as a judicial presence. The conjecture that the ol aunoni might have something to say in matters pertaining to the cult or might make magic amulets is obvious, but does not prove to be true.

561 791 We have seen above that every two age classes form an association. If the members of this association have all been married a long time, the ol oiboni binds them even closer in that he bestows upon the two age classes, each of which -- which is to be said beforehand -- has its own name, a common name. This takes place at 561 the ol ñeñer festival. For this all the men of the association gather 791 near the ol oiboni and build a large kraal in the vicinity of his village. 527 Everyone brings honey for beermaking or a head of cattle for the food. The latter is then killed by suffocation, as at the eñ gebāta festival. The festival consists of the consumption of these things, whose climax is formed by the declaration of the ol oiboni that those assembled henceforth belong to one association (ol adji), which only now actually exists and are to bear a common association-name.

[Warrior Kraal]

/86 cont./

701 speaking, yet their facial expression usually remains unchanging,
537 neither agreement nor difference of opinion may be read into it. The orator is not interrupted any more than he is forced to become silent by the restlessness of the listeners. Each one is allowed to deliver his speech unhindered to the end. We have here the simple flowing speech, in contrast to the dialogue type of the Negroes, where another respected man stands or squats opposite the speaker and at every punctuation pause, at every comma of the speech given jerkily in choppy sentences, makes known by an unbelievably stupid-sounding, more or less grunting ɛ̄, ē, or hm that he has understood the words spoken. The task of the speaker consists chiefly of arousing, by means of a feigned friendship with the chiefs of livestock-rich peoples, in the latter a blind confidence in the Masai, /87/ which
701 will facilitate for the latter a sudden, predatory attack. Moreover,
726 he constantly keeps himself informed through spies (often old women and a couple of boys) about all the questions of importance for the success of a war expedition, for example, concerning the strength of the opponent, whether he perhaps, for example, might be especially suspicious, where and how one might most easily take him by surprise, where the most livestock might be, where they pasture,
701 where they stay at night, where the fewest warriors live, etc. The
[554] speaker himself need not be a brave warrior; rather, cunning, deception, guile are the characteristics that qualify him for the political aspect of his office.

• [692] Another task is the administration of justice incumbent upon him; he is the deciding judge in civil and penal matters for the warriors of his kraal.

701 A leading role among the warriors is played, furthermore, by
554 the el oiñok (1)

1. Sing. ol oiñoni.

(= the bulls), of whom there are five or six in every kraal and who gain their position by courage and bravery in war, as well as by superior physical strength. They are the leaders in battle. As a
[714] sign of their rank they wear, in dancing and in hand-to-hand
[534]

/217 cont./

681 Unknown in penal law are: an aggravated death penalty, for example, death by fire, the principle of an eye for an eye, the view that the perpetrator must pay with the body part with which he has sinned, as well as symbolism, inprisonment, enslavement, a public monetary fine besides the composition, public monetary fines in general, a right of pardon.

683 579 There still remains to be pointed out one penal decree, which, however, exists only for warriors. That the calling and way of life of the warriors, who are impressed primarily by brute strength and force, are not suitable for preventing rowdiness is obvious and is shown by the frequent, more or less rough brawls among them. Insofar as they seem useful for promoting personal courage, they are not punished; for those connected with bodily injury what was said above applies. For the brawls a stick or a club is used as a weapon and the shield for display. In order to force the opponent to leave himself open, one directs a blow on the left lower arm holding the shield, and, to be sure, not infrequently so violently that it is shattered. Now, if a warrior has already inflicted broken bones on the opponent several times, especially in the manner just described, all the warriors, under the leadership of their ol aigwenani, gather together and announce to him that he will be outlawed if he once more /218/ engages in a brawl; if the one warned violates this prohibition, every warrior of the kraal is justified in killing him.

• 692 561 [556] [628] The legal proceedings are the same in civil and penal cases; in both there is only one court for the people of a district. For the warriors this is the speaker (ol aigwenani); for the older married men an older, respected, i.e., wealthy, man chosen each time by the persons concerned to settle the particular case presented. In controversial matters between warriors of different kraals or, which is usually the same thing, of different areas, the speakers concerned jointly confer and decide, either alone or, if they do not reach a definite decision, with the advice of an ol aunoni, whose voice is then decisive. In disputes among married men of different areas a mixed council of elders decides. The ol oiboni may be regarded as a court of review, who, however, is called upon only in those 692 cases which concern the commonweal. There are civil proceedings

692 /218 cont./
only in putting forward property claims, and then only in the rare cases in which self-help is not preferred to legal procedure. The prosecution of a punishable deed does not take place by official action, but only on the basis of a complaint raised by the injured party. Judicial proceedings are generally customary.

685 The procedure in the penal case of a livestock theft, which occurs frequently, is to be shown. It is to be assumed that an ox has been stolen in the pasture. If the boy tending the livestock observed the theft, he notifies the owner of the herd (father or brother of the herdsman) upon coming home in the evening. Otherwise the wives of the owner, in looking over the livestock, immediately notice the loss, since they know every head precisely. All the conversation in the kraal only revolves around the theft, and through that it becomes known on that same evening, not only in the home kraal, but also in the neighboring ones. The friends of the one robbed declare themselves ready to pursue the thief and track down the stolen head of cattle. If their investigation leads [692] to their discovering the ox or parts of it, so that the thief can be convicted, there are as a rule no judicial preceedings, since the perpetrator and his accomplices usually immediately declare themselves ready to pay the customary fine. If, however, the investi- [787] gation is without success, the person robbed turns to a sorcerer [694] (ol goiatiki), who, on the basis of an oracle (eñ gidoñ), gives him a description of the appearance of the thief, whereupon the one robbed will accuse of the theft a man who fits this description. The 695 one so accused appears in the following proceedings as defendant, 685 in the same way as, say, one who is charged on circumstantial [693] evidence. The one robbed selects as leader of the proceedings a respected old man who must have formerly once been speaker of [202] the warriors. This man determines /219/ the day and place of the [237] proceedings and has this announced by a crier, who goes to the neighboring kraals, draws attention to himself by blowing a kudu or oryx horn, and informs the approaching people about the matter. Further, the judge summons plaintiff, defendant, and possibly witnesses by messengers. If the defendant refuses to appear, he is forcefully led up by friends of the plaintiff. Anyone may appear a as a witness. Relatives of the defendant may refuse both to give

/220 cont./

562 694 695 Women are also entitled to make a complaint. Evidence presented by witnesses is valid only to the extent that the persons assembled for the proceedings wish to be convinced by it.

683 [692] The crime of sorcery is only rarely dealt with in a judicial assembly. For the most part the one bewitched, after he has learned from an ol goiatiki the name of the bewitcher, prefers to induce the latter, through gifts, to bewitch him healthy again. Thereupon the two conclude friendship /221/ or, however -- and this not infrequently happens -- the bewitched one now kills his opponent, and, to be sure, without inviting blood revenge upon himself because of it.

681 648 [575] [781] There are no secret societies for the purpose of legal actualization or for other purposes. Bier tests or the belief that the dead person will reveal the murderer in a dream are unknown. The Masai do not live with other peoples in such a relationship that the latter could demand or request expiation for murder or some other crime or misdemeanor committed by a Masai on a non-Masai. In this case, therefore, the deed remains unexpiated, whereas the Masai as a rule practice retaliation if the deed was committed on one of their people. Whether or not the murder committed on an Asá or an ol Kuafi by a Masai is expiated depends in each case on the greater or lesser degree of friendly relations that exist between the communities of the murderer and the one murdered. In most cases expiation does not take place, whereas if the injured one is a Masai, his fellow tribesmen will answer with war.